

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) TSCA Docket No. VII-91-T-167
)
McDonnell Douglas Corporation) COMPLAINT AND NOTICE OF
140 McDonnell Boulevard) OPPORTUNITY FOR HEARING
St. Louis, Missouri 63042)
)
Respondent)

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (hereinafter "TSCA"), 15 U.S.C. Section 2615(a).

2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated federal regulations addressing the manufacture, processing, use, distribution in commerce, disposal, storage, and marking of polychlorinated biphenyls (hereinafter "PCBs"), 40 C.F.R. Part 761 (as recodified May 8, 1982), promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. Section 2605(e), and thereby has violated Section 15 of TSCA, 15 U.S.C. Section 2614.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air and Toxics Division, Region VII.

4. The Respondent is the McDonnell Douglas Corporation, incorporated under the laws of the State of Maryland, and licensed to do business in the State of Missouri.

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Superfund

Section III

Violations

COUNT I

5. The Complainant hereby states and alleges that Respondent has violated federal regulations, promulgated pursuant to TSCA, as follows:

6. On or about January 9, 1991, an authorized EPA representative conducted an inspection pursuant to §11 of TSCA, 15 U.S.C. §2610, of Respondent's facility located at 140 McDonnell Boulevard, St. Louis, Missouri 63042.

7. During the January 9, 1991, inspection, the EPA representative took photographs, collected records, and made observations relevant to the Respondent's compliance with 40 C.F.R. Part 761. The majority of the inspection dealt with electrical transformers filled with the dielectric fluid Askarel. Askarel is nominally 750,000 parts per million (hereinafter "ppm") polychlorinated biphenyls.

8. During the January 9, 1991, inspection, the EPA representative observed two transformers: General Electric (hereinafter "GE"), Serial Number (hereinafter "SN") 6417737 and GE, SN 6622457, in transformer room three of building two. Nameplate information on the transformers indicated the dielectric fluid therein was "Pyranol", a trade name for Askarel.

9. The two transformers referenced in paragraph 8 are PCB transformers as defined at 40 C.F.R. §761.3.

10. The EPA representative observed combustible materials stored in the transformer room (room three of building two) near the transformers.

11. The regulation at 40 C.F.R. §761.30 (a)(1)(viii) prohibits the storage of combustible materials within a PCB transformer enclosure.

12. Failure to follow the requirements of 40 C.F.R. §761.30 (a)(1)(viii) promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

13. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 6 through 12 above, it is proposed that a civil penalty of Six Thousand Dollars (\$6,000) be assessed against Respondent.

COUNT II

14. Paragraphs 6 and 7 are herein restated and incorporated.

15. During the January 9, 1991, inspection, the EPA representative observed two transformers: GE SN 6417746 and GE SN 6622443, in transformer room four of building two. Nameplate information on the transformers indicated the dielectric fluid therein was "Pyranol", a trade name for Askarel.

16. The two transformers referenced in paragraph 15 are PCB transformers as defined at 40 C.F.R. §761.3.

17. The EPA representative observed combustible materials stored in the transformer room (room four of building two) near the transformers.

18. The regulation at 40 C.F.R. §761.30(a)(1)(viii) prohibits the storage of combustible materials within a PCB transformer enclosure.

19. Failure to follow the requirements of 40 C.F.R. §761.30(a)(1)(viii) promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

20. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 14 through 19 above, it is proposed that a civil penalty of Six Thousand Dollars (\$6,000) be assessed against Respondent.

COUNT III

21. Paragraphs 6 and 7 are herein restated and incorporated.

22. During the January 9, 1991, inspection, the EPA representative observed one transformer: Maloney SN 1760036, in fan room twenty-seven of building two. Nameplate information on the transformer indicated the dielectric fluid therein was Askarel.

23. The transformer referenced in paragraph 22 is a PCB transformer as defined at 40 C.F.R. §761.3.

24. The EPA representative observed combustible materials stored in the room (fan room twenty-seven of building two) near the transformer.

25. The regulation at 40 C.F.R. §761.30(a)(1)(viii) prohibits the storage of combustible materials within a PCB transformer enclosure.

26. Failure to follow the requirements of 40 C.F.R. §761.30 (a)(1)(viii) promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

27. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 21 through 26 above, it is proposed that a civil penalty of One Thousand Dollars (\$1,000) be assessed against Respondent.

COUNT IV

28. Paragraphs 6 and 7 are herein restated and incorporated.

29. During the January 9, 1991, inspection, the EPA representative observed two transformers: Westinghouse (hereinafter "WHS") SN 5699110 and WHS SN 633506, in room 110 of building 42. Nameplate information on the transformers indicated the dielectric fluid therein was "Interteen", a trade name for Askarel.

30. The two transformers referenced in paragraph 29 are PCB transformers as defined at 40 C.F.R. §761.3.

31. The EPA representative observed combustible materials stored in the transformer room near the transformers.

32. The regulation at 40 C.F.R. §761.30(a)(1)(viii) prohibits the storage of combustible materials within the transformer enclosure.

33. Failure to follow the requirements of 40 C.F.R. §761.30 (a)(1)(viii) promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

34. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 28 through 33 above, it is proposed that a civil penalty of Six Thousand Dollars (\$6,000) be assessed against Respondent.

COUNT V

35. Paragraphs 6 and 7 are herein restated and incorporated.

36. During the January 9, 1991, inspection, the EPA representative observed a transformer: GE SN 7103075, in transformer room twenty-two of building twenty-seven. Nameplate information on the transformer indicated the dielectric fluid therein was "Pyranol", a trade name for Askarel. Askarel had leaked from the transformer to the concrete floor beneath it.

37. The transformer referenced in paragraph 36 is a PCB transformer as defined at 40 C.F.R. Part 761.3.

38. The regulation at 40 C.F.R. §761.60(d) states that spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs.

39. As defined at 40 C.F.R. §761.3, a leak means any instance in which a PCB transformer has any PCBs on any portion of its external surface. Disposal is defined to include spills, leaks, and other uncontrolled discharges of PCBs.

40. PCBs at concentrations of 50 ppm or greater must be disposed of by the methods specified in 40 C.F.R. §761.60

41. At the time of the January 9, 1991, inspection, the leaking dielectric fluid from the transformer referenced in paragraph 36 constituted disposal of PCBs in a manner other than in accordance with the requirements at 40 C.F.R. §761.60.

42. Failure to follow the requirements of 40 C.F.R. §761.60 promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

43. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 35 through 42 above, it is proposed that a civil penalty of Five Thousand Dollars (\$5,000) be assessed against Respondent.

COUNT VI

44. Paragraphs 6 and 7 are herein restated and incorporated.

45. During the January 9, 1991, inspection, the EPA representative observed a transformer: GE SN 6417746 in transformer room four of building two. Nameplate information on the transformer indicated the dielectric fluid therein was "Pyranol", a trade name for Askarel. The transformer showed evidence of leakage on the outside and Askarel had dripped to the floor beneath it.

46. The transformer referenced in paragraph 45 is a PCB transformer as defined at 40 C.F.R. Part 761.3.

47. The regulation at 40 C.F.R. §761.60 (d) states that spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs.

48. As defined at 40 C.F.R. §761.3, a leak means any instance in which a PCB transformer has any PCBs on any portion of its external surface. Disposal is defined to include spills, leaks, and other uncontrolled discharges of PCBs.

49. PCBs at concentrations of 50 ppm or greater must be disposed of by the methods specified in 40 C.F.R. §761.60.

50. At the time of the January 9, 1991, inspection, the leaking dielectric fluid from the transformer referenced in paragraph 45 constituted disposal of PCBs in a manner other than in accordance with the requirements of 40 C.F.R. §761.60.

51. Failure to follow the requirements of 40 C.F.R. §761.60 promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

52. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 44 through 51 above, it is proposed that a civil penalty of Five Thousand Dollars (\$5,000) be assessed against Respondent.

COUNT VII

53. Paragraphs 6 and 7 are herein restated and incorporated.

54. The regulation at 40 C.F.R. §761.180(a) states that facilities owning at least one PCB transformer are to develop and maintain records on the disposition of PCBs and PCB items. It further states that these records be used to form the basis of an annual document which is to be prepared by July 1 each year for the preceding calendar year.

55. The Annual Document collected by the EPA representative during the January 9, 1991, inspection, for the 1989 calendar year was dated July 16, 1990.

56. Failure to follow the requirements of 40 C.F.R. §761.180(a) promulgated pursuant to §6(e) of TSCA, 15 U.S.C. §2605(e), renders Respondent in violation of §15(1) of TSCA, 15 U.S.C. §2614(1).

57. Pursuant to §16(a) of TSCA, 15 U.S.C. §2615(a), and based on the facts stated in paragraphs 53 through 56 above, it is proposed that a civil penalty of One Thousand Three Hundred Dollars (\$1,300) be assessed against Respondent.

Section IV

Relief

58. Section 16(a) of TSCA, 15 U.S.C. Section 2615, authorizes a civil penalty of up to \$25,000 per day for each violation of the Act. The penalties proposed in paragraphs 13, 20, 27, 34, 43, and 52 above, are based upon the facts stated in the Complaint, and on the nature, circumstances, extent, and gravity of the

above cited violations in accordance with the April 9, 1990, Polychlorinated Biphenyls Penalty Policy (55 F.R. 13955), as well as the Respondent's history of prior violations and degree of culpability.

The following is a summary of the penalties proposed for the subject violations:

SUMMARY OF PROPOSED PENALTIES

COUNT I

15 U.S.C. §2614 (1)
40 C.F.R. §761.30 (a)(1)(viii)

Storage of combustibles within a PCB
transformer enclosure \$6,000

COUNT II

15 U.S.C. §2614 (1)
40 C.F.R. §761.30 (a)(1)(viii)

Storage of combustibles within a PCB
transformer enclosure \$6,000

COUNT III

15 U.S.C. §2614 (1)
40 C.F.R. §761.30 (a)(1)(viii)

Storage of combustibles within a PCB
transformer enclosure \$1,000

COUNT IV

15 U.S.C. §2614 (1)
40 C.F.R. §761.30 (a)(1)(viii)

Storage of combustibles within a PCB
transformer enclosure \$6,000

COUNT V

15 U.S.C. §2614 (1)
40 C.F.R. §761.60

Improper disposal of PCBs \$5,000

COUNT VI

15 U.S.C. §2614 (1)
40 C.F.R. §761.60

Improper disposal of PCBs \$5,000

COUNT VII

15 U.S.C. §2614 (1)
40 C.F.R. §761.180(a)

Failure to properly maintain records \$1,300

59. Payment of the total penalty - \$30,300 - may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

Mellon Bank
EPA - Region 7
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Section V

Answer and Request for Hearing

60. As provided in Section 16(a) of TSCA, you have the right to request a hearing to contest any material fact contained in the Complaint. If you wish to avoid being found in default, you must file a written answer and request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, within twenty (20) days of service of this complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

a. The circumstances or arguments which are alleged to constitute the grounds of defense; and

b. The facts which Respondent intends to place at issue.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

61. Any hearing that you request shall be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits" (40 C.F.R. Part 22), a copy of which accompanies this Complaint and Notice of Opportunity for Hearing.

62. If you fail to file a written answer and request for a hearing within twenty (20) days of service of this complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all allegations made in the Complaint, and a waiver of your right to a hearing under TSCA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed herein shall become due and payable without further proceedings. Such Default Order is not subject to review in any court.

Section VI

Settlement Conference

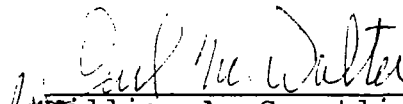
63. Whether or not you request a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, please write to Ms. Julie Van Horn, Attorney, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, or call at 913/551-7889.

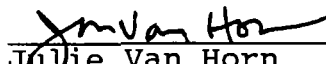
64. Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

65. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order issued by the Regional Administrator, United States Environmental Protection Agency, Region VII. The issuance of such a Consent Agreement and Consent Order shall constitute a waiver of your right to request a hearing on any matter stipulated therein.

66. If you have neither effected a settlement by informal conference nor requested within the twenty (20) day time period allowed by this Notice, the above penalties will be assessed without further proceedings and you will be notified that the penalties have become due and payable.

Date MAY 17, 1991


William A. Spratlin
Director
Air and Toxics Division


Julie Van Horn
Attorney
Office of Regional Counsel

Enclosures: Consolidated Rules of Practice
Polychlorinated Biphenyls (PCB) Penalty Policy

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice and the Polychlorinated Biphenyls (PCB) Penalty Policy were mailed by certified mail, return receipt requested, to Mr. John McDonnell, Chief Executive Officer, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, Missouri 63166, on this 20th day of May, 1991.


Cynthia Sehnert-Jones